



MONTANA COUNTY ATTORNEYS ASSOCIATION
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Good morning Chairwoman MacDonald and members of the Law & Justice Interim Committee. My name is Mark Murphy. I am here today on behalf of the Montana County Attorneys Association. Thanks for the opportunity to spend a few minutes with you. We appreciate it. I do have a brief written statement that I'll hand out with your permission Madame Chair. Thank You.

You'll recall that the President of the Association, Fallon-Carter Attorney Richard Batterman, spoke to you at your April 28th meeting about prosecution services and our effort to do something to increase the salaries of the deputy county attorneys, who as Mr. Batterman said, are the 'heart and soul' of the county attorney offices in Montana. We appreciated the discussion in April, and the insightful questions committee members asked than. Since April we've been working to improve our information in response to your questions and comments.

At some point in all this, thankfully, Cascade County Attorney John Parker remembered Senate Joint Resolution 40, which was carried in the 2005 legislative session by then Senator Trudi Schmidt at the request of then Attorney General Mike McGrath. The background report for SJ 40 was prepared for the Law & Justice Interim Committee by Sheri Heffelfinger (Scurr) and published in September 2005, entitled: Background Report on County Attorney Services in Montana.

This Report has within it pretty much everything you always wanted to know about the Office of county attorney in Montana, and prosecution services at the local level in this state. Some of this information has changed during the last nine years; but most of it is still accurate, and overall it's still a good resource for the LJIC members. Ms. Rachel Weiss is aware of the SJ 40 Report and will provide a copy of it to anyone who wants one.

I'll get back to the SJ 40 Report momentarily, but first I'd like to share our objective for the 2015 session with you. You'll recall that in April Mr. Batterman said that the County Attorneys were attempting to find a way and a method by which the state of Montana could assist financially with the salaries of the deputy county attorneys. He mentioned two options under consideration:

- 1) amending the existing statutory appropriation at MCA 7-4-2502 that pays the state share of the elected county attorney's salary.
- 2) amending the existing deputy longevity statute at MCA 7-4-2503 by increasing the dollar amounts found therein.

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Exhibit 21

After a great deal of thought, consultation and discussion, the County Attorneys Association has determined that the second method is the best at this time.

Accordingly, the Association is planning to introduce legislation in 2015 that would adjust the amounts currently in statute for inflation over the 30 years since it was enacted.

The sub-section at 7-4-2503 says that after completing four years of service as a deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1000. After five years of service, each deputy is entitled to an additional increase in salary of \$1500. After completing 6 years of service as a deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase of \$500.

This longevity statute was enacted in 1985 (?). It has remained the same ever since. Meanwhile, as with everything else inflation has taken its toll on the purchasing power these amounts represent. The County Attorneys are suggesting that these amounts need to be adjusted for inflation.

We are drafting a 'fiscal note' (layman's fiscal note) to show the cost of this. Since April we've learned how many deputy county attorneys are in the various Offices, how long they've been there, what they are being paid, and what the longevity increment for each of them is in each county. This information is the basis for the 'fiscal note' the Association is preparing at this time.

I must note that this approach does not meet our goal of getting the state of Montana to make this investment in prosecution services and deputy county attorneys. If this bill is introduced and passed, the financial responsibility for the increase in deputy longevity will be borne at the local level, by the counties.

The reason for this approach goes back to the SJ 40 Study; and I'd like to return to that and discuss it with the Committee for a few minutes. Here are two key paragraphs from the SJ 40 Study in 2005:

"Issues: The key issues in the Senate Joint Resolution No. 40 study request are county attorney salary, workload, performance, and how the state and counties share costs. Introduced by Sen. Trudi Schmidt (D-Great Falls), SJR 40 received strong support from Attorney General Mike McGrath, the Montana Association of Counties (MACo), and the Montana County Attorneys Association. No one testified in opposition to the bill.

Questions and discussion during session hearings boiled the issues down to one broader policy question: Should Montana establish a district attorney prosecution system. One option for a district county prosecution system discussed in testimony was to have district county attorneys elected by judicial district with 100% of the costs paid by the state."

Ultimately the LJIC, and the Legislature in the 2007 session, determined to maintain the current system of locally elected county attorneys, the current funding arrangement, and to forgo attempting to establish a state funded prosecution services system.

At the end of the day, the county attorneys of Montana felt this was the correct choice. They were not ready to sacrifice 'local control' for state funding. That's about as simply as I can state it for you this morning. So, there were not any LJIC bills introduced in 2007 arising out of the SJ 40 interim Study.

In 2007 the County Attorneys Association did bring forward House Bill 12, which established the state's share of the elected county attorney's salary as a statutory appropriation, rather than as a biennial, HB 2, appropriation. HB 12 did pass in the 2007 session and it has worked smoothly ever since. There was some confusion about this in April. Rep. Hill-Smith asked Rich Batterman why HB 12 failed in 2007. Rich replied that wasn't sure. In fact, however, HB 12 passed in 2007. And as I said, it has worked well since then.

As I mentioned, we gave a lot of thought to adding deputy county attorneys to this statutory appropriation. In addition to the cost involved, there are administrative difficulties with this approach. Mainly, while there is always an elected county attorney, with a salary set annually by county resolution, deputies do come and go; and their salaries vary from time to time and place to place in Montana. Thus, the salaries of the elected county attorneys are 'predictable' this is not the case with the deputy county attorneys. The key criteria for whether or not an appropriation ought to be 'statutory' or not is whether it is 'calculable and predictable.' For this, and other reasons, the County Attorneys Association decided that the better route in 2015 is to attempt to amend the deputy longevity and increase the amounts in MCA 7-4-2503.

So, that's where we are and that's what we've come to Madame Chair and members of the LJIC. We're working on a draft fiscal note. The county attorneys are meeting in early October to review the findings we'll have then; and make decisions based in part on the costs of the various options under consideration. The first organization we'll share those findings and decisions with will be the Montana Association of Counties. We will hopefully be able to obtain MACO's support for the legislation under consideration.

That concludes my update to the LJIC. I hope to see many of you back as elected members of the Montana Legislature in January; and to those of you who will not be returning myself and the county attorneys thank you for your leadership and service over the years; and wish all the best in your future endeavors. I'll try to answer any questions you may have.

Thank you for the time and opportunity to provide this update.

Mark Murphy, MCAA Lobbyist